UNITED STATES DISTRICT COURT	
WESTERN DISTRICT OF WASHINGTON	
AT SEATTLE	
JONATHAN O'DUFFY, an individual,	Case No. 2:21-cv-01433
Plaintiff,	
VS.	NOTICE OF REMOVAL TO
MAGIC LEAP, INC., a Delaware Corporation.,	FEDERAL COURT PURSUANT TO 28 U.S.C. §§ 1441 AND 1446
Defendant.	
	S DISTRICT COURT FOR THE WESTERN INGTON;
AND TO: PLAINTIFF JONATHARECORD:	AN O'DUFFY AND HIS ATTORNEYS OF
PLEASE TAKE NOTICE that, pursuar	nt to 28 USC §§1441 and 1446, Defendant Magic
Leap, Inc. hereby remove to this Court the case	e now pending in King County Superior Court as
O'Duffy v. Magic Leap, Inc., Case No. 21-2-1	2870-6 SEA.
STATEMENT OF FACTS	
1. On September 28, 2021, Plaintiff Jonathan O'Duffy filed King County Superior	
Court Case No. 21-2-12870-6 SEA against Magic Leap, Inc.	
	JONATHAN O'DUFFY, an individual, Plaintiff, vs. MAGIC LEAP, INC., a Delaware Corporation., Defendant. TO: THE UNITED STATES DISTRICT OF WASHI AND TO: PLAINTIFF JONATHA RECORD: PLEASE TAKE NOTICE that, pursuar Leap, Inc. hereby remove to this Court the case O'Duffy v. Magic Leap, Inc., Case No. 21-2-1 STATEM 1. On September 28, 2021, Plaintiff

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- 2. Service of the Complaint was perfected on Magic Leap, Inc. on September 30, 2021.
- 3. Plaintiff alleges in the Complaint that his limited use of the Magic Leap One (an augmented reality device) resulted in eye pain, declining ocular function and mental health, and diagnoses of convergence insufficiency, accommodative insufficiency, bilateral disorder of vestibular function, and unspecified focal traumatic brain injury.
- 4. Defense counsel understands from prior communications from Plaintiff's counsel that Mr. O'Duffy treated with multiple medical providers, undergoing numerous tests and treatment. (Decl. Saack). In October of 2019, a year after the original alleged incident, Mr. O'Duffy claimed to have ongoing issues with his eyes without improvement. (Decl. Saack). Defense counsel understands that Mr. O'Duffy also missed work, which he claims is as a result of his alleged injuries. (Decl. Saack).
- 5. Plaintiff alleges he suffered "significant personal injuries" and is seeking damages for "medical treatment, and incurred pain and suffering, loss of enjoyment of life, temporary and permanent impairment, lost wages, and loss of earning capacity and other damages[.]" (Compl. ¶ 28).
- 6. Magic Leap, Inc. has not yet filed an Answer or otherwise responded to Plaintiff's Complaint.

GROUNDS FOR REMOVAL

As grounds for removal, Magic Leap, Inc. states as follows:

5. 28 U.S.C. § 1441(a) provides "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States . . ." This court has original jurisdiction over all civil actions where the matter in controversy exceeds \$75,000 and is between citizens of different states. 28 U.S.C. § 1332 (1).

- 6. For purposes of diversity jurisdiction, a corporation is a citizen of every state in which it has been incorporated and of the state where it has its principal place of business. 28 U.S.C. § 1332 (c)(1). This action may be removed pursuant to 28 U.S.C. § 1441 because the action involves a controversy between citizens of different states, and the Defendant, in good faith, believes the amount in controversy exceeds \$75,000, exclusive of interest and costs.
- 7. Plaintiff was, when he filed his complaint, and is now, a citizen and resident of the State of Washington. (Complaint, ¶ 1).
- 8. Magic Leap, Inc. has a good faith basis to believe the plaintiff is seeking damages in excess of the jurisdictional amount based on the damages described in the Complaint for permanent impairment, medical treatment, wage loss, impairment of earning capacity, and noneconomic damages. Further, Defense counsel's prior communications from Plaintiff's counsel indicate that Plaintiff is claiming that despite treatment with multiple medical providers, his condition did not improve for at least one year after the initial incident.
- 9. Magic Leap, Inc., at the time of the filing of the complaint, and is now, a citizen of Delaware (its place of incorporation) and Florida (the location of its headquarters and principal place of business). (Complaint, ¶ 2).
- 10. At the time of the filing of the original Complaint complete diversity existed between the parties.
 - 11. At the time of removal, complete diversity still exists between the parties.
- 12. In compliance with 28 U.S.C. 1446(a), attached hereto as Exhibit A are copies of all processes, pleadings, and orders served on or otherwise provided to Magic Leap in the King County proceeding to date.

TIMELINESS OF REMOVAL

13. This action is timely under 28 U.S.C. § 1446(a), which provides that notice of removal must be filed within 30 days after a defendant receives, by service or otherwise, the

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initial pleading. Defendant received a copy of the Complaint on September 28, 2021. The time for removal does not expire until October 28, 2021. **VENUE** 14. Venue of this action is proper in the Western District of Washington as this is the district and division in which the State court action is pending. 28 U.S.C. § 1446(a). NOTICE OF REMOVAL TO STATE COURT 15. Magic Leap, Inc. certifies that a true and correct copy of this Notice of Removal to Federal Court will promptly be filed with the Clerk of the Superior Court of the State of Washington for King County pursuant to 28 U.S.C. § 1446(d). **CONCLUSION** 16. This Court has jurisdiction over these claims under 28 U.S.C. § 1332. Therefore, this action may be removed to this court pursuant to 28 U.S.C. §§1441 and 1446. 17. Magic Leap, Inc. reserves the right to supplement or amend this Notice of Removal. 18. If any questions arise as to the propriety of the removal of this action, Magic Leap, Inc. respectfully requests the opportunity to present a brief, with supporting evidence, and requests oral argument supporting the removal of this action. 19. This Notice of Removal in no way constitutes a waiver of any jurisdictional defenses to Plaintiff's claims; a waiver of any defense or contest to the validity and effectiveness of service of process upon any defendant; a waiver of the statute of limitations defense; or a waiver of any other defenses or challenges to the Complaint. 20. This notice of removal is signed pursuant to FRCP 11. /// /// /// ///

1 WHEREFORE, Magic Leap, Inc. prays that this civil action be removed from the 2 Superior Court of the State of Washington for the County of King to the United States District 3 Court for the Western District of Washington. 4 DATED this 20th day of October, 2021. 5 **DAVIS ROTHWELL** 6 EARLE & XÓCHIHUA, PC 7 anny Sauch 8 William A. Davis, WSBA #14020 9 wdavis@davisrothwell.com John E. Moore, WSBA #45558 10 jmoore@davisrothwell.com Amy L. Saack, WSBA #53923 11 asaack@davisrothwell.com Of Attorneys for Defendant 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26

1	CERTIFICATE OF SERVICE
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3	I hereby certify that on October 20, 2021, I caused the foregoing document to be sent via
4	email and first class mail, and to be filed with the Clerk of the United States District Court for
5	the Western District of Washington using the CM/ECF Filing System which will send
6	notification of such filing to:
7	
8	Plaintiff's Counsel
9	Patrick Cook, WSBA #28478
10	Caroline Golshan, WSBA #56635 Walthew, Thompson, Kindred, Costello,
11	Winemiller & Cook, P.S. PO Box 34645
12	Seattle, WA 98124-1645
13	pcook@walthew.com cgolshan@walthew.com
14	Of Attorneys for Plaintiffs
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16	EXECUTED this 20th day of October, 2021, at Portland, Oregon.
17	_/s/ Geannie M. Sehorn
18	Geannie M. Sehorn, Legal Assistant
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